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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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JAN 20 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matters of)
)
Ameritech Corporation Telephone)
Operating Companies' Continuing)
Property Records Audit,)
et al.)
)
In the Matter of)
)
MCI WorldCom, Inc.)
On Request for Inspection of Records)

CC Docket No. 99-117

ASD File No. 99-22

FOIA Control No. 99-163

To: The Commission

OPPOSITION TO PETITION FOR PARTIAL RECONSIDERATION

Pursuant to Section 1.106(g) of the Commission's rules, 47 C.F.R. § 1.106(g), U S WEST Communications, Inc. ("U S WEST") respectfully opposes the Petition of AT&T Corp. ("AT&T")^{1/} and MCI WorldCom, Inc. ("MCI") for Partial Reconsideration of the Commission's Memorandum Opinion and Order ("Order"), released on December 6, 1999, in the above-captioned proceeding.

In their petition, AT&T and MCI seek the release of additional confidential information related to the Commission's audits of the RBOCs' continuing property records. Specifically, they seek the release of vendor-specific pricing information, which the Commission has

^{1/} AT&T appears not to be a proper party to petition for reconsideration of the Commission's Order. Rule 1.106(b)(1) provides that petitions for reconsideration may be filed by parties to the proceeding. AT&T did not either file a FOIA request or participate in the proceedings with respect to MCI's FOIA request before the Common Carrier Bureau or on

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concluded should not be released to interested parties because “[w]e do not think public comment on costs for [these] carriers is critical to our consideration of this issue in the NOI.” Order ¶ 13. U S WEST submits that the Commission’s protection of this confidential information was clearly appropriate.

First and foremost, U S WEST opposes the release of this information for the same reason it has consistently opposed the release of confidential audit materials throughout this proceeding.^{2/} Release of *any* confidential audit materials would constitute a violation of the Trade Secrets Act, a criminal statute that forbids agencies and agency employees to release confidential materials unless “authorized by law.” 18 U.S.C. § 1905.

But even assuming *arguendo* that the release of vendor-specific pricing information would be permitted under the Trade Secrets Act, AT&T and MCI have presented no specific reason why the Commission’s judgment was in error. AT&T and MCI assert, as they have throughout this proceeding, that they need this vendor-specific information in order to respond to “Issue No. 2” of the Commission’s Notice of Inquiry.^{3/} But the Commission considered this argument already and decided that “[r]edaction of this information will not compromise the ability of the public to respond to Issue No. 2 of the NOI.” Order ¶ 13. In their petition, AT&T and MCI simply assert that “due process” entitles them to examine vendor-specific audit

application for review to the Commission. Nor has AT&T “show[n] good reason” why it could not have participated in those proceedings, as Rule 1.106 requires. *Id.*

^{2/} See U S WEST’s Application for Review and Review of Freedom of Information Action (filed Aug. 3, 1999), and Reply of U S WEST to MCI’s Opposition (filed Aug. 27, 1999). The Commission denied in part U S WEST’s Application for Review, and U S WEST has appealed the Commission’s decision to the D.C. Circuit. See *U S WEST Communications, Inc. v. FCC*, No. 99-1531 (docketed Dec. 20, 1999).

^{3/} See *Ameritech Corp. Tel. Operating Cos. ’ Continuing Property Records Audit et al.*, Notice of Inquiry, 14 FCC Rcd 7019, 7021 ¶ 6 (1999).

materials because they claim that the RBOCs have used these materials in support of their claims in the NOI proceeding. Whatever the case may be with respect to audits of the other RBOCs, the petitioners have failed to support it with respect to U S WEST. In fact, the Commission did not rescore its audit findings with respect to U S WEST. Thus, the only question under Issue No. 2 of the NOI, which is the relevant proceeding here, is U S WEST's challenge to the agency's decision not to rescore its findings of "not found" equipment in the absence of "probative evidence" documenting the existence of such equipment. That issue has nothing to do with vendor-specific pricing information: U S WEST has asserted that the test applied by the Commission is inconsistent with generally accepted auditing standards and with the Commission's own record retention rules, and was unfairly applied without prior notice of the need for such documentation.^{4/} As the Commission correctly decided, comment on vendor-specific pricing information is unnecessary to address those arguments.

The petitioners' reliance on the public's right of participation in non-audit proceedings certainly does not support their position here. *See* Petition at 10-11 n.17. This proceeding is not a rulemaking. *Compare* 5 U.S.C. § 553(c) *with* 47 U.S.C. § 220. Nor is this an adjudication between two private parties in which one party needs confidential information in order to respond to the claim of the other. This proceeding concerns an audit of the RBOCs, conducted by the Commission with the benefit of confidential information supplied by them. Similarly, whatever information may have been released in state-conducted adjudications under Sections 251 and 252 of the Communications Act, *see* Petition at 13, those proceedings (like rulemakings) afford certain parties a statutory right of participation. *See* 47 U.S.C. § 252. No such right exists with respect to audits. Furthermore, the states and their agencies are not bound by the strictures

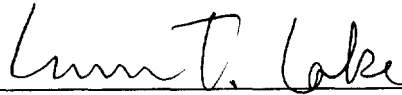
^{4/} *See* Comments of U S WEST Communications, Inc. at 13-16 (Sept. 23, 1999) (CC

of the Trade Secrets Act, which applies to "officer[s] or employee[s] of the United States or of any department or agency thereof." 18 U.S.C. § 1905.

CONCLUSION

For these reasons, the Petition for Partial Reconsideration filed by AT&T and MCI should be denied.

Respectfully submitted,



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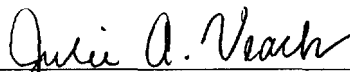
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January 20, 2000

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 20th day of January, 2000, I caused true and correct copies of the foregoing Opposition to Petition for Partial Reconsideration of U S WEST Communications, Inc., to be served by first class mail, postage prepaid, or by hand via messenger*, upon the following parties:



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